Supreme Court, U.S.
FILED
05-233 AUG 16 2005
OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

JANET CAMPBELL,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

JANET CAMPBELL
TWO PARKER AVENUE
No. 302
SAN FRANCISCO, CA 94118
(415) 876-1039

Petitioner pro se

Becker Gallagher Legal Publishing, Inc. 800.890.5001

QUESTION PRESENTED

This case concerns the overlap between (1) California's False Claims Act and "whistleblowing" statutes expressly affording University of California employees a judicial remedy for injuries resulting from reporting their employer's violations of state and federal law; (2) the internally-promulgated whistleblowing policy of an employer with which this Court is well familiar - the Regents of the Univ. of California (Respondent). *Hamilton v. Regents of Univ. of California* (1934) 293 U.S. 245 (*Hamilton*); *Univ. of California Regents v. Bakke* (1978) 438 U.S. 265 (*Bakke*); and *Regents of the Univ. of California v. DOE* (1997) 519 U.S. 425; and (3) a judicially-created rule of administration with which this Court is also well familiar - the exhaustion of administrative remedies doctrine (Exhaustion Doctrine). *Patsy v. Board of Regents* (1982) 457 U.S. 496 (*Patsy*). This case also concerns a state's highest court that has *unilaterally, unanimously* and *without precedent* expanded the reach of the Exhaustion Doctrine in a manner communicating to its citizens and government whistleblowers that, despite compelling state interests to the contrary, there are windows in the State of California where Justice BRANDEIS'S highly-esteemed and widely-available brand of "disinfectant" will not be permitted to shine.

The Question Presented is:

Whether a UC Whistleblower is denied equal protection of the laws by the Lower Courts' imposition of the Exhaustion Doctrine to bar her statutory claims in a court of law because she didn't *go back* after termination to *internally* grieve her employer's violations of state and federal law?

PARTIES TO THE PROCEEDING

Janet Campbell was the Plaintiff in the Superior Court of the State of California, County of San Francisco (Case No. 312736); Appellant in the Court of Appeal, First Appellate District (Case No. A097560) and Appellant in the California Supreme Court (Case No. S113276). The Regents of the Univ. of California was the Defendant in the Superior Court; and the Respondent in the Court of Appeal and Supreme Court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES vi

OPINION BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

A. Factual Background 3

B. Proceedings Below 4

REASONS FOR GRANTING THE PETITION 13

I. THE LOWER COURTS' IMPOSITION OF THE EXHAUSTION DOCTRINE WITHOUT PRECEDENT OR JUSTIFICATION BURDENS FREE SPEECH IN MATTERS GOING TO THE CORE OF PUBLIC CONCERN 17

A. Imposition of the Exhaustion Doctrine Without Statutory Mandate or Precedent Renders California "Whistleblower" Law a Regulatory Maze 20

B. Imposition of the Exhaustion Doctrine Without Statutory Mandate or Precedent Constitutes Content-Based Viewpoint Discrimination Subject to Strict Scrutiny 22

C. Imposing the Exhaustion Doctrine Contravenes the Express Purpose of the Statutes - UC Employee's Freedom to Whistleblow - Without Serving a Compelling Interest in the Efficiency of the Public Service Respondent Performs - Education of Our Young and Research for the Benefit of the Public 24

II. THE DECISION BELOW HOISTS SUBSTANTIAL PROCEDURAL AND ECONOMIC BURDENS ON UC WHISTLEBLOWERS CONFLICTING WITH THIS COURT'S EQUAL PROTECTION JURISPRUDENCE 26

III. THIS COURT HAS ALREADY DEFINED THE OUTER LIMIT OF RESPONDENT'S AUTHORITY AND COMPETENCE UNDER THE LAW 29

CONCLUSION 30

APPENDICES

Appendix A: *Campbell v. Regents of Univ. of California* (2005) 35 Cal.4th 311 . . . . . 1a

Appendix B: *Campbell v. Regents of Univ. of California*, (No. A097560) Unpublished Opinion 28a

Appendix C: Judgment of Dismissal, Superior Court of California, Country of San Francisco 45a

Appendix D: Order Denying Petition for Rehearing 47a

Appendix E: Cal. Gov. Code, § 12650 et seq 48a

Appendix F: Cal. Labor Code, , § 1102.5 et seq . . . 69a

Appendix G: University of California Reporting Improper Governmental Activities and Protection Against Retaliation (*Whistleblowing/Retaliation Policy*) (Revised 10/7/98) 73a

TABLE OF AUTHORITIES

PAGE

CASES

Amluxen v. Regents of Univ. of California,
53 Cal.App.3d 27 (1975) 10

Apte v. Regents of the Univ. of California,
198 Cal.App.3d at 1092 (1988) 10, 18

Bodie v. Connecticut, 401 U.S. 371 (1971) 28

Broussard v. Regents of the Univ. of California,
131 Cal.App.3d 636 (1982) 9, 10

Brown v. City of Los Angeles,
102 Cal.App.4th 155 (2002) 22

Campbell v. Regents of Univ. of California,
35 Cal.4th 311 (2005) 1, 19

Ciba-Geigy Corp. v. Alza Corp.,
804 F.Supp. 614 (1992) 9, 19

Coleman v. Regents of Univ. of California,
93 Cal.App.3d 521 (1979) 9

Gentile v. State Bar of Nevada,
501 U.S. 1030 (1991) 16, 21

Hamilton v. Regents of the Univ. of California,
293 U.S. 245 (1934) 18, 19

Ishi v. Regents of Univ. of California,
... Cal.App.2d 854 (1968) ..... *passim*

Keyishian v. Board of Regents of University of State of New York, 385 U.S. 589 (1967) 20, 24

Lindsey v. Normet,
405 U.S. 56 (1972) 17, 27, 28, 29

Logan v. Zimmerman Brush Co.,
455 U.S. 422 (1982) 27, 28

Madey v. Duke,
307 F.3d 1351 (Fed. Cir. 2002),
cert. denied, 123 S. Ct. 2639 (2003) 13, 15, 16

Mendoza v. Regents of Univ. of California,
78 Cal.App.3d 168 (1978) 11

N.A.A.C.P. v. Button,
371 U.S. 415 (1963) 20

Neary v. Regents of Univ. of California,
185 Cal.App.3d 1136 (1986) 14

Neary v. Regents of Univ. of California,
3 Cal.4th 273 (1992) 15

New State Ice Co. v. Liebmann,
285 U.S. 262 (1932) 17

Palmer v. Regents of University of California,
107 Cal.App. 4th 899 (2003) 26

Patsy v. Board of Regents,
457 U.S. 496 (1982) 2, 8, 21, 22

Pickering v. Board of Education of Township High School District 205, 391 U.S. 563 (1968) 25

Police Dept. of Chicago v. Mosley,
408 U.S. 92 (1972) 7, 8, 23

In re Quarles,
158 U.S. 532 (1895) 12, 13, 17, 22

Regents of Univ. of California v. Bakke,
438 U.S. 265 (1978) 13, 29, 30

Regents of the Univ. of California v. City of Santa Monica, 77 Cal.App.3d 130 (1978) 19

Regents of the Univ. of California v. DOE,
519 U.S. 425 (1997) i

In re Royer, 123 Cal. 614 (1899) 18, 19, 22

San Francisco Labor Council v. Regents of Univ. of California, 26 Cal.3d 785 (1980) 19

Schifando v. City of Los Angeles,
31 Cal.4th 1074 (2003) 11-12

Tameny v. Atlantic Richfield Co.,
27 Cal.3d 167 (1980) 26

Unix System Labs v. Berkeley Software Design,
832 F.Supp. 790 (1993) 19

CONSTITUTION

Cal. Const. Article IX, § 1, subd. (a) 2
Cal. Const. Article IX, § 9, subd. (a) 23
Cal. Const. Article IX, § 9, subd. (f) 23

STATUTES

28 U.S.C. § 1257 1
35 U.S.C. § 200-212 13
Cal. Code of Civ. Proc., § 1094.5 10
Cal. Gov. Code, § 11340 9
Cal. Gov. Code, § 11349(a) – (f) 9
Cal. Gov. Code § 11500 *et seq* 9
Cal. Gov. Code, §11512 9
Cal. Gov. Code, §11513 9
Cal. Gov. Code, §12650 *et seq* 1
Cal. Gov. Code, §12652.5 2
Cal. Gov. Code, § 12653 . . . . . 4, 5, 6, 21, 23
Cal. Gov. Code, § 12940 *et seq* 12
Cal. Labor Code, § 1102.5 . . . . . *passim*
Cal. Labor Code, § 1106 2

Miscellaneous:

Goldie Blumenstyk, *Reviewers Give Thumbs Down to Corporate Deal at Berkeley*, The Chronicle of Higher Education v. 50 (Aug. 6, 2004) 21

Eyal Press and Jennifer Washburn, *The Kept University*, Atlantic Monthly v. 285 (March 2000) 14

Robert van den Bosch, *The Pesticide Conspiracy* (Univ. of California Press, 1978) 14, 20

Sharon Walsh, *Berkeley Denied Tenure to Ecologist Who Criticized University's Ties to the Biotechnology Industry*, The Chronicle of Higher Education, v. 50 (Jan. 9, 2004) . . . 20

Janet Campbell respectfully petitions for a writ of certiorari to review the judgment of the California Supreme Court.

OPINION BELOW

The opinion of the California Supreme Court (App. A, *infra*, 1a - 27a) is reported at 35 Cal.4th 311. The opinion of the First Appellate District Court of Appeal, (App. B, *infra*, 28a - 44a) was an unpublished opinion.

JURISDICTION

The judgment of the California Supreme Court was filed on March 7, 2005. The Petition for Rehearing was denied on May 18, 2005. App. D, *infra*, at 47a. The jurisdiction of this Court is invoked under 28 USC § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The U.S. Constitution's First Amendment provides: "*Congress shall make no law . . . abriaging the freedom of speech. . .* "

2. The Fourteenth Amendment provides: "*No State shall make or enforce any law which shall; . . . deny to any person within its jurisdiction the equal protection of the laws.*"

3. California's "False Claims Act," Cal. Gov. Code, §12650 *et seq.*, is at App. E, *infra*, at 48a.

4. California's "whistleblower" statute, Cal. Labor Code, § 1102.5 *et seq.*, is at App. F, *infra*, at 69a.

5. Respondent's *"Whistleblowing/Retaliation" Policy* is at App. G, *infra* at 73a.

STATEMENT

This case concerns the overlap between California's False Claims Act (FCA) and whistleblower statutes affording